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Memorandum

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AZ CORP COMMISSION**DATE:** March 29, 2001

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TO: Nancy Cole
Docket Control

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FROM: Mark Dinell
Securities Division**RE:** Melvin Lee Cline, et al.
Docket No. S-03431A-01-0000
Assigned Staff**CC:** Mabel Aldridge

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- ☒ Mark Sendrow
- ☒ LeRoy Johnson
- ☐ Matthew Neubert

Mark Dinell (Staff Attorney)

Terry Nelson (Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: Jennifer Boucek.

BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

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In the matter of:

MELVIN LEE CLINE

7812 Via de la Entrada

Scottsdale, Arizona 85258

WHY NOT ENTERTAINMENT, L.L.C.

7229 East 1st Av., Suite C

Scottsdale, Arizona 85251

Respondents.

DOCKET NO. S-03431A-01-0000

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES AND
FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. MELVIN LEE CLINE ("CLINE"), whose last known Arizona address was 7812 Via de la Entrada, Scottsdale, Arizona 85258, is Chief Executive Officer of WHY NOT ENTERTAINMENT, L.L.C.

1 3. WHY NOT ENTERTAINMENT, L.L.C ("WHY NOT") is an Arizona limited liability
2 corporation, whose last known address was 7229 East 1st Av., Suite C, Scottsdale, Arizona 85251.

3 4. The respondents may be collectively referred to as "RESPONDENTS."

4 **III.**

5 **FACTS**

6 5. Beginning in February 2000, RESPONDENTS have engaged in the offer or sale within or
7 from Arizona of securities in the form of stock to the public of WHY NOT.

8 6. CLINE came up with the concept for WHY NOT and created a "Confidential Private
9 Offering Memorandum" ("POM") for WHY NOT, seeking to raise \$10,000,000 through the sale of
10 common stock. The POM was given to prospective investors. The POM listed CLINE as the Interim
11 CEO and Director of WHY NOT.
12

13 7. According to RESPONDENTS, WHY NOT intended to use the proceeds of the
14 offering primarily to invest in Touch-Tunes Music Corporation, an OTCBB company, in a joint
15 venture with Sonic Corporation, a Nasdaq listed company, in Straightline Entertainment, Inc. and in
16 Infant Art-in-Motion, the later two being private companies, plus the purchase of \$1,000,000 of
17 jukeboxes, to be located in Arizona and Hawaii.
18

19 8. No investment was ever made by WHY NOT. Instead, it spent the money raised on
20 marketing, salaries and expenses. The salaries paid by WHY NOT include CLINE's annual salary of
21 \$100,000.
22

23 9. The POM stated that the stock offering was a private offering, via an exemption under
24 Federal Rule 506 and Regulation D and a corresponding exemption under the Securities Act.
25 However, no filing, as required by A.A.C. R14-4-126, was made with the Securities Division.
26

10. The POM stated that as of its offering date, 1,687,500 shares of WHY NOY were outstanding, including 1,625,000 owned by New Millennium, Ltd., a Antiguan company controlled by CLINE. However, no shares had been issued to New Millennium nor had it purchased or paid for any shares. No disclosure was given in the POM or to investors that CLINE had created the concept of New Millennium, had been its CEO or that he controlled New Millennium through a power of attorney.

11. The POM states that CLINE "graduated with a Masters Degree in Marketing and Business Management from Owens University." That information was false, as CLINE had never graduated from college, much less received a master's degree.

12. The POM did not disclose, nor did RESPONDENTS inform investors that CLINE had been convicted in 1986 of five felony counts of obtaining property by false pretenses and additional counts of transacting worthless checks and had been sentenced to eight years in prison.

13. RESPONDENTS did not inform investors that on July 14, 1999, the state of Alaska had entered a temporary cease and desist order against CLINE, fining him \$25,000, for violations of that State's securities law. That order became final on January 7, 2000.

14. WHY NOT raised at least \$112,500 from at least seven investors, in Arizona and Colorado.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

15. From on or about January 2000, RESPONDENTS offered or sold securities in the form of stock, within or from Arizona.

16. The securities referred to above were not registered pursuant to the provisions of Articles 6 or 7 of the Securities Act.

17. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

18. RESPONDENTS offered or sold securities within or from Arizona, while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

19. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

20. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

- a) Failing to disclose to investors CLINE's felony convictions.
- b) Failing to disclose to investors that the state of Alaska had found that CLINE had violated that State's securities laws and had fined him \$25,000 for the violation.
- c) Falsely informing investors in the POM that WHY NOT's stock was exempt from registration while never taking the steps necessary in order to have such exemption.
- d) Falsely informing investors in the POM that 1,625,000 shares of WHY NOT had been sold to New Mellennium, Ltd.
- e) Failing to disclose to investors that New Mellennium, Ltd., a company listed as owning the controlling interest in WHY NOT, was controlled by CLINE.

f) Falsely stating in the POM that CLINE "graduated with a Masters Degree in Marketing and Business Management from Owens University," when CLINE had never attended Owens University, much less obtain a master's degree from it.

21. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

4. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or

1 ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without
2 a hearing, enter an order against each RESPONDENT granting the relief requested by the Division in this
3 Notice of Opportunity for Hearing.

4 Persons with a disability may request a reasonable accommodation such as a sign language
5 interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood,
6 ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should
7 be made as early as possible to allow time to arrange the accommodation.

8 Dated this 29th day of March, 2001.

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11 Mark Sendrow
12 Director of Securities
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